**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

**W.P.No.26268 of 1996**

Between
The Life Insurance Corporation of India, Machlipatnam ..Petitioner

AND

The Presiding Officer, Industrial Tribunal, Hyderabad and another ..Respondents

**JUDGMENT**

**14.3.2007**

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

**W.P.No.26268 of 1996**

**ORDER:**

This writ petition is instituted by the Life Insurance Corporation of India calling in question the correctness of the Award passed by the Industrial Tribunal in I.D.No.34 of 1993 wherein the order of termination dated 24.1.1991 passed by the petitioner herein is set aside and the petitioner is directed to reinstate the unofficial respondent No.2 – workman forthwith, with back wages from 30.8.1993. The Industrial Tribunal has also directed the petitioner herein to appoint respondent No.2 as Development Officer on Probation, Grade I in terms of Clause 7.1 of the Life Insurance Corporation of India (Apprentice Development Officer) Recruitment Scheme, 1980.

The Tribunal has framed the following three points for its consideration:

1. Whether the petitioner K.V.R.C.Reddy, Apprentice Development Officer is a workman under Section 2(s) of the I.D. Act?
2. Whether the Management of the respondent Corporation is justified in terminating the services of the petitioner K.V.R.C.Reddy on completion of apprenticeship period?
3. To what relief, the petitioner is entitled to?

While dealing with the first point as to whether the respondent No.2 is a workman or not, the Tribunal had answered it in the affirmative based upon two judgments, one rendered by this Court reported in **Divisional Manager, L.I.C., Machlipatnam and others v. M.Venugopal**[1] and the other rendered by the Supreme Court in **S.K.Verma vs. Mahesh Chandra**[2]. The Tribunal had expressed its opinion on this point No.1 as under:

> "Therefore, relying on these decisions, I have no hesitation to conclude that the petitioner who is an Apprentice Development Officer in L.I.C. is a workman within the meaning of Section 2(s) of the Act. The point is thus decided in favour of the petitioner-workman."

Unfortunately, the attention of the Tribunal has not been invited to the Constitution Bench judgment of the Supreme Court rendered in **H.R.Adyanthaya vs. Sandoz (India) Ltd.,**[3] in which case, the Supreme Court had occasion to consider the judgment rendered by it earlier in **S.K.Verma**'s case (supra) in the following manner:

> "In S. K. Verma v. Mahesh Chandra, (1983) 3 SCR 799 : (AIR 1984 SC 1462), the dispute was whether Development Officers of the Life Insurance Corporation of India (LIC) were workmen. The dispute arose on account of the dismissal of the appellant-Development Officer w.e.f. 8th February, 1969. The Court noticed that the change in the definition of workman brought about by the Amending Act 36 of 1956 which, as stated above, added to the originally enacted definition, two more categories of employees, viz., those doing "supervisory" and "technical" work. The three-Judge Bench of this Court did not refer to the earlier decisions in May and Baker (AIR

1967 SC 678), WIMCO (AIR 1964 SC 472) and Burmah Shell cases (AIR 1971 SC 922) (supra). The Bench only referred to the decision of this Court in Workmen of Indian Standards Institution v. Management of Indian Standards Institution, (1976) 2 SCR 138 : (AIR 1976 SC 145) where while considering whether ISI was an "industry" or not, it was held that since the ID Act was a legislation intended to bring about peace and harmony between management and labour in an "industry", the test must be so applied as to give the widest possible connotation to the term "industry" and, therefore, a broad and liberal and not a rigid and doctrinaire approach should be adopted to determine whether a particular concern was an industry or not. The Court, therefore, held that to decide the question whether the Development Officers in the LIC were workmen or not, it should adopt a pragmatic and not a pedantic approach and consider the broad question as to on which side of the line the workman fell, viz., labour or management, and then to consider whether there were any good reasons for moving them over from one side to the other. The Court then noticed that the LIC Staff Regulations classified the staff into four categories, viz., (i) Officers, (ii) Development Officers, (iii) Supervisors and Clerical staff. and (iv) Subordinate staff. The Court pointed out that Development Officers were classified separately both from Officers on the one hand and Supervisors and Clerical Staff on the other and that they as well as Class III and Class IV staff other than Superintendents were placed on par inasmuch as their appointing and disciplinary authority was the Divisional Manager whereas that of Officers, was Zonal Manager. The Court also referred to their scales of pay and pointed out that the appellation 'Development Officer' was no

more than a glorified designation. The Court then referred to the nature of duties of the Development Officers and pointed out that a Development Officer was to be a whole-time employee and that his operations were to be restricted to a defined area and that he was liable to be transferred. He had no authority whatsoever to bind the Corporation in any way. His principal duty appeared to be to organise and develop the business of the Corporation in the area allotted to him, and for that purpose, to recruit active and reliable agents, to train them, to canvass new business and to render post-sale services to policy-holders. He was expected to assist and inspire the agents. Even so, he had not the authority either to appoint them or to take disciplinary action against them. He did not even supervise the work of the agents though he was required to train them and assist them. He was to be a friend, philosopher and guide of the agents working within his jurisdiction and no more. He was expected to "stimulate and excite" the agents to work while exercising no administrative control over them. The agents were not his subordinates. He had no subordinate staff working under him. The Court, therefore, held that it was clear that the Development Officer could not by any stretch of imagination be said to be engaged in any administrative or managerial work and, therefore, he was a workman within the meaning of the ID Act. Accordingly, the order of the Industrial Tribunal and the judgment of the High Court holding that he was not a workman was set aside. As has been pointed out above, this decision did not refer to the earlier three decisions in May and Baker (AIR 1967 SC 678), WIMCO (AIR 1964 SC 472) and Burmah Shell cases (AIR 1971 SC 922) (supra) and obviously proceeded on the basis that if an employee did not come within the four

> exceptions to the definition, he should be held to be a workman. This basis was in terms considered and rejected in Burmah Shell case (supra) by a co-ordinate Bench of three-Judges. Further no finding is given by the Court whether the Development Officer was doing clerical or technical work. He was admittedly not doing manual work. We may have, therefore, to treat this decision as per incuriam."

Thus, the Supreme Court had pointed out that the decision rendered in **S.K.Verma**'s case has to be treated as *per incuriam.* Consequently, such a decision would not have become a valid precedent to be relied upon by the Industrial Tribunal in the instant case. Unfortunately, the Tribunal did not provide an opportunity for both parties to lead appropriate evidence for the purpose of enabling it to arrive at the conclusion as to whether respondent No.2 herein is a workman in terms of the definition contained in Section 2(s) of the Industrial Disputes Act. Perhaps, the Tribunal did not find it necessary to do so in view of its examination of **S.K.Verma**'s case. If only the judgment of the Constitution Bench in **H.R.Adyanthaya**'s case (supra) is brought to the notice of the Tribunal, perhaps it would have had an occasion to allow or let the parties to lead appropriate evidence in the matter and decide the issues raised on consideration of the material that was brought before it. If the answer furnished by the Tribunal on issue No.1 is to be set aside by me and hold that the 2nd Respondent is not a workman, it would be a travesty of justice, inasmuch as the second respondent did not have an opportunity to establish that he is liable to be considered as a workman still, based upon many factors which make him to be treated and considered as a workman.

Similarly, if the 2nd Respondent cannot be treated as a workman at all, the Industrial Tribunal cannot usurp the jurisdiction to examine the correctness of the orders passed by the writ petitioner.

I therefore consider it appropriate to set aside the Award passed by the Industrial Tribunal in I.D.No.34 of 1993 and remand the matter back for fresh consideration by the Tribunal by providing an opportunity to both sides to lead evidence and satisfy the Tribunal as to whether the second respondent herein is a workman or not. At the same time, all other questions are also left open for both parties to satisfy the Tribunal that the second respondent herein can still press for the relief of setting aside the order of termination passed by the petitioner on 24.1.1991 and to demonstrate that it is not legally valid. Therefore, the Award passed in I.D.No.34 of 1993 is set aside and the matter is remanded to the Industrial Tribunal for fresh consideration.

The writ petition is accordingly, allowed. No costs.

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**NOOTY RAMAMOHAN RAO.J.**

14.3.2007
psr

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[1] 1993 (1) ALT 77

[2] AIR 1984 SC 1462 = (1983 (47) Indian Factories Labour Reports 313

[3] AIR 1994 SC 2608